IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

WP(C).No. 8737 of 2007(M)

IOP.4/2005 of PRL.SUB COURT, KOZHIKODE
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PETITIONER:

A.MANOHARAN,
S/O.GOPALAN, NEDUNGOTTUR VILLAGE,
KOZHIKODE.

BY ADV. SRI.K.P.BALASUBRAMANYAN
SRI.NIRMAL. S

RESPONDENT:

K.SREEDHARAN,
S/O.PACHUKUTTY, NEDUNGOTTUR VILLAGE,
KOZHIKODE.

BY ADV. SRI.K.A.SALIL NARAYANAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 12/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.8737/2007 M

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF PETITION DTD. 15/02/2005 FILED BY THE RESPONDENT BEFORE THE SUB COURT, KOZHIKODE.**

EXT.P2: **COPY OF COUNTER STATEMENT DTD. 23/05/2005 FILED BY THE PETITIONER BEFORE THE SUB COURT, KOZHIKODE (P).**

EXT.P3: **COPY OF PENSIONER'S BILL.**

EXT.P4: **COPY OF REGISTRATION PARTICULARS OF THE MOTORBIKE OF RESPONDENT HAVING REGISTRATION NO.KL-11-U.795.**

EXT,P5: **COPY OF ORDER DTD. 30/01/2007 IN I.O.P.NO.4/2005 OF THE COURT OF THE PRL.SUB COURT, KOZHIKODE.**

/TRUE COPY/

KSS

M.N.KRISHNAN, J

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W.P.(C) No.8737 OF 2007

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Dated this the 12th day of July, 2007

JUDGMENT

This writ petition is preferred against the order of the Principal Sub Court, Kozhikode in I.O.P.No.4 of 2005. The suit is one for setting aside a document which is described as A schedule in Ext.P1 petition. It is averred that the petitioner is not having any income so as to pay the court fee and therefore prays for permitting him to sue as an indigent person. Under Order XXXIII of the Code of Civil Procedure if a person is not having sufficient means which enables him to pay the court fee prescribed by law, he may be permitted to sue as a indigent person. It is also a settled principle that the property which is under dispute shall not be taken into account for arriving at the means of the person. I am informed that X1 report was filed to the effect that the indigent petitioner did not have any other movable property within the jurisdiction. The description of B Schedule in the petition itself would reveal that he has got a deposit of Rs.75,000/- in Treasury savings bank and another sum of Rs.1 lakh as fixed deposit in the same savings bank, or in other words, the petitioner is a person having deposit of

Rs.1,75,000/- with him. It is also come out in evidence that there are other sources of income such as pension at the rate of Rs.3,000/-. The court fee to be paid is only Rs.14,000/-. When a person is having a fixed deposit of Rs.1,75,000/- and when a monthly pension of Rs.3,000/- is also derived, it may not be proper for any authority to hold that he is not having means to pay the court fee of Rs.14,000/-. Even if a loan is taken from the fixed deposit receipt, i.e. over draft facility, the court fee can be paid. The intention of the Legislature under Order XXXIII is to protect the persons, who are not having any assets at all to prosecute a suit and not the other way. I am afraid the learned Sub Judge has not adverted to the facts which he should have done and his order suffers from serious infirmity and the facts and figures supplied by the person, who wanted permission to sue him as an indigent person are more than the means of that person to pay the court fee of Rs.14,000/-.

Therefore the order under challenge is set aside and the alleged indigent petitioner is directed to pay the court fee within a period of 30 days and if he pays the court fee, the suit may be converted as original suit and if it is not paid within the stipulated time, the indigent O.P. shall stand

dismissed.

With the above direction, writ petition is disposed of.

M.N.KRISHNAN, JUDGE

Cdp/-